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No. 93-164

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

GEOPHYSICAL SYSTEMS CORPORATION,
Petitioner,

v.

RAYTHEON COMPANY and SEISMOGRAPH SERVICE CORPORATION

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF FOR PETITIONER

Jerrold J. Ganzfried
Counsel of Record
HOWREY & SIMON
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 783-0800

Counsel for Petitioner
Geophysical Systems Corporation

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The petition explained why this case raises important, recurring questions regarding the constitutional and statutory mandates of federalism in the courts of the United States. In the decision below, the court of appeals departed significantly from state law precedents and perceived a non-existent and insupportable anticipated "trend" in the law that has not been substantiated even today by the state courts. Respondents' brief does little to avoid the conclusion that such departures from the tenets of federalism create uncertainty and unfairness to litigants and exacerbate the very dangers that *Erie Railroad Co. v. Tompkins*, 304 U.S. 817 (1938), and its progeny were intended

to preclude: the "divergent development of state law" leading to a "dual system of enforcement of state-created rights," depending upon the forum. *Salve Regina College v. Russell*, 111 S. Ct. 1217, 1222 (1991).

1. Respondents put their finger precisely on the constitutional infirmity in this case when they state that "GSC filed its action against SSC, *opting to do so in federal district court rather than the state courts of California or Oklahoma*" (Br. in Opp. 3 (emphasis added)). Their plain implication -- that selection of a federal forum may be outcome determinative -- pinpoints the peril to federalism raised in the petition. Contrary to the view of the Constitution that respondents espouse, substantive issues of state law must be decided uniformly *regardless* of the forum. As the petition urges, this Court has recognized the need to assure such uniformity and has granted review in a series of cases since *Erie* in order to promote that objective. *See, e.g., Clay v. Sun Ins. Office Ltd.*, 363 U.S. 207 (1960); *Lehman Bros. v. Schein*, 416 U.S. 386 (1974); *Salve Regina College*, 111 S. Ct. 1217. A clear statement from this Court in the present case would further that same goal and would provide guidance for lower federal courts when they are called upon to divine "trends" in state law.

2. There is no merit to respondents' contention (Br. in Opp. 1) that review should be denied because this case involves "routine" contractual claims. The nature of the underlying claim can scarcely preclude the existence of important constitutional and jurisprudential questions that warrant this Court's review. Landmark decisions are often wrapped in perhaps surprising litigation packages. Under respondents' view, one could just as easily dismiss *Erie* as a routine personal injury claim and *Salve Regina College* as a routine contract dispute. Further examples are plentiful and have arisen from the earliest days of the Republic to the present. *E.g., Immigration and Naturalization Service v. Chadha*, 462 U.S. 917 (1983) (important separation of powers

issue arising in otherwise routine deportation proceeding); *Martin v. Hunter's Lessee*, 14 U.S. 304 , 1 Wheat. 304 (1816) (landmark decision on Supreme Court's appellate jurisdiction over state courts arising in routine action to quiet title to real property).

Indeed, the more commonplace the underlying claims, the more it highlights the recurring nature of the questions presented and the large number of litigants affected by a decision. At its core, the petition in this case targets the routinization of error in the lower federal courts. It provides an opportunity for this Court to establish the proper standards for deciding whether federal courts may expand or contract state law in ways the state courts have not adopted.

3. Although the question presented in the petition implicates the standards for federal court application of state law consistent with the constitutional and statutory requirement of uniformity, we note that respondents mistakenly seek to distinguish some of the state law cases cited in the petition. GSC's claim for breach of the implied covenant of good faith and fair dealing is a contract claim; it is not a tort claim. GSC is not seeking any tort remedies, only contract remedies. But the court of appeals concluded that the discovery rule, expressly held applicable to such claims in *April Enterprises, Inc. v. KTTV*, 195 Cal. Rptr. 421 (Ct. App. 1983), is no longer applicable. None of the cases cited by respondents in their attempt to justify the "trend" of *Foley v. Interactive Data Corp.*, 254 Cal. Rptr. 211 (1988), holds that the discovery rule should not govern statute of limitations issues in claims for breach of the implied covenant of good faith; indeed, most of the cases do not even address the relevant statute of limitations issue at all (as *Foley* similarly did not). Instead, those cases cite *Foley* for the simple proposition – irrelevant in this case – that tort ***remedies*** are unavailable for a breach of the implied

covenant of good faith absent the existence of a special relationship.[1]

4. For present purposes, the dispositive point is that it is reserved exclusively to state courts to divine trends in state law and to determine the frontiers to which state law should be extended. The Constitution creates no function in that process for the federal courts; concepts of federalism and an explicit statutory mandate require federal courts to apply state law as it exists. Because federal courts face the task of discerning state law on a daily basis, this Court should grant review to clarify uniform standards and to ensure that the instructions of *Erie*, *Salve Regina College*, *Lehman Brothers* and *Clay* are applied consistently nationwide.

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[1] Respondents totally misread *Krieger v. Nick Alexander Imports, Inc.*, 234 Cal. App. 3d 205, 285 Cal. Rptr. 717 (1991), in stating that the court "cited *Foley* in refusing to apply the discovery rule." (Br. in Opp. 11). It is true that the court cited *Foley* and that it did not apply the discovery rule; but there was no connection between the two whatsoever. The court cited *Foley* simply to explain the covenant of good faith and fair dealing. 285 Cal. Rptr. at 726. In a ***different section*** of the opinion, the court found the discovery rule did not apply because of lack of evidence; it did not hold that the discovery rule was per se inapplicable to such claims as a matter of law. *Id.* at 727. Indeed, on the legal issue involved in this case, the court cited *April Enterprises* with approval, noting that California does apply the discovery rule to such claims where the evidentiary predicate is met. *Id.*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Jerrold J. Ganzfried
Counsel of Record
HOWREY & SIMON
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402
(202) 783-0800

Counsel for Geophysical
Systems Corporation

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